

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 937 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AJITSINH TAPUBHAI

Versus

JIVATIBEN KHIMABHAI

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR SANDEEP N BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/10/97

ORAL JUDGEMENT

Rule. Service of rule waived by Mr.Sandeep Bhatt, learned Advocate appearing for the respondent.

2. Heard. The applicant herein is the original defendant - tenant and the opponent herein is the original plaintiff - landlord. They will be described as the defendant and the plaintiff in this Judgment.

3. The plaintiff filed Rent Suit No.366 of 1985 in the Court of learned Additional Judge, Small Causes Court at Rajkot for recovery of rent, which according to him fell in arrears from 22.5.1982, mesne profits and possession of the suit premises on the ground of arrears

of rent. The defendant resisted the suit inter-alia asserting that he was ready and willing to pay the rent, that he filed Standard Rent Application No.Civil Misc. Application No.466 of 1985, that he had tendered rent by Money Order on 14.11.1985 and that in fact he was not in arrears of rent and had paid rent upto September, 1985.

4. The learned trial Judge by his Judgment and decree dated 16.4.1990 decreed the plaintiff's Suit both for arrears of rent as well as possession of the suit premises, resulting in the defendant filing Regular Civil appeal No.28 of 1991 before the learned District Judge, Rajkot, who by his order dated 30.1.1997 dismissed the Appeal and vacated the stay of execution of the decree passed by the trial Court. That is how the defendant has preferred this Civil Revision Application under Section 29(2) of the Bombay Rents, Hotel & Lodging House Rates Control, Act, 1941 (for short "the Act").

5. By consent of the learned Advocates for the parties this Revision is taken up for final hearing today.

6. Having heard the learned Advocates for the parties I am of the opinion that the matter deserves consideration on merits by the learned District Judge in the Regular Civil Appeal No.28 of 1991. What the learned district Judge has done is to record the presence of Mr.P.H.Kotecha, learned Advocate appearing for the appellant and record his statement that his client was not responding to him and was not giving instructions. The learned District Judge has then referred to application Ex.5 moved by the appellant's l.a. submitting list of documents Exh.6 indicating that the learned Advocate Mr.P.H.Kotecha had written to his client to remain present before the Court on 30.1.1997. The learned District Judge has then observed as under :

"Considering the facts of the case, it is quite clear that the appellant has not been attending to the case nor his learned advocate Mr.P.H.Kotecha is apprised to argue the appeal on merits. In that view of the matter, appeal has to be dismissed with cost of the respondent."

7. It is not understandable how the appellant's presence was necessary by Mr.Kotecha to argue the matter on merits. He could have presented before the learned District Judge his own grievance, if any, qua his client frankly or he could have taken time from the learned District Judge for preparing himself by referring to the

record of the case so as to argue the matter before the learned District Judge. Instead, it appears that he has allowed the Appeal to be dismissed. In substance the Appeal has been dismissed for want of prosecution in a manner which would indicate that the dismissal is in substance can not be said to be due to the fault of the appellant. Be that it may, Mr.M.K.Patel, learned Advocate for the applicant submits that he has clearly informed his client that if he or his learned Advocate henceforth does not proceed with the Appeal before the appellate Court and if the Appeal is dismissed for want of prosecution, his client would be the sufferer and then he would not be heard about the fate of the Appeal going against him. Both the learned Advocates also submit that the Appellate Court might be directed to hear and dispose of the Appeal as expeditiously as possible, preferrably within a period of six months from the date of receipt of writ of this direction.

8. In above view of the matter and in the peculiar facts of the case, following order is passed :

This Civil Revision Application is allowed. The Judgement and Decree rendered by the learned District Judge on 30.1.1997 in Regular Civil Appeal No. 28 of 1991 dismissing the Appeal is hereby set aside. The Appeal is remanded to the Appellate Court for hearing the same on merits. The Appellate Court will decide the Appeal in accordance with law after giving opportunity to the parties/their learned Advocates of being heard, as expeditiously as possible, preferrably within a period of six months from the date of receipt of writ of this direction. The stay which was granted in the pending Appeal will continue till the Appeal is finally decided.

Office to send the writ of this direction immediately to the Appellate Court.

Rule made absolute in the aforesaid terms. No order as to costs.

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